

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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WILLIAM H. MCDERMOTT,

Plaintiff,

Civ. Action No.  
5:02-CV-0607 (NAM/DEP)

vs.

GREAT AMERICAN ALLIANCE  
INSURANCE CO.,

Defendant.

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APPEARANCES: OF COUNSEL:

FOR PLAINTIFF:

Office of William S. Andrews  
217 South Salina Street  
Sixth Floor  
Syracuse, NY 13202

WILLIAM S. ANDREWS, ESQ.

FOR DEFENDANT:

BOEGGEMAN, GEORGE LAW FIRM  
46 Columbia Street  
Albany, NY 12207

GEORGE S. HODGES, ESQ.

FORAN, GLENNON LAW FIRM  
150 South Wacker Drive  
11th Floor  
Chicago, IL 60606

THOMAS B. ORLANDO, ESQ.

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

## ORDER

Currently pending before the court in connection with this action are cross motions of the parties. The process was initiated by defendant's filing of a motion seeking leave to amend its answer to assert an affirmative defense based upon an appraisal mechanism set forth in the applicable insurance agreement, and to stay this litigation pending completion of that appraisal process. Dkt. No. 41. In addition to opposing that motion, plaintiff has cross-moved seeking leave to amend his complaint to reflect changed circumstances since the commencement of the action, including revisions to damage figures and to reflect payments made by the defendant. Dkt. No. 44. Defendant does not oppose plaintiff's motion.

Oral argument was heard in connection with the parties' cross motions on February 8, 2006. At the close of argument I issued an oral decision, which is incorporated herein by reference, denying defendant's motion and granting plaintiff's cross motion. Based upon the foregoing, and for the reasons set forth in the court's bench decision, it is hereby

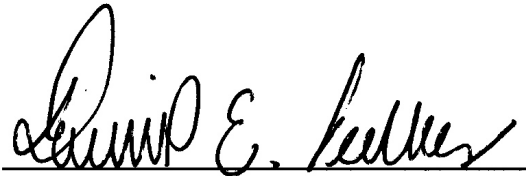
ORDERED as follows:

- 1) Defendant's motion for extension of the deadline for

amendment of pleadings set forth in the court's Uniform Pretrial Scheduling Order issued on September 16, 2002 (Dkt. No. 10), and for leave to amend its answer and to stay these proceedings (Dkt. No. 41) is hereby DENIED.

2) Plaintiff's cross motion for leave to amend his complaint to conform to the evidence and reflect developments since commencement of suit (Dkt. No. 44) is GRANTED.

3) The clerk is directed to promptly forward copies of this order electronically.

A handwritten signature in black ink, appearing to read "David E. Peebles", is written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: February 8, 2006  
Syracuse, NY